

## **EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Consolidated Case No. 09-cv-006869(SAS)(DF)

-----X

BOARD OF TRUSTEES OF THE AFTRA RETIREMENT  
FUND, in its capacity as a fiduciary of  
the AFTRA Retirement Fund, individually  
and on behalf of all other similarly  
situated,

Plaintiff,

-against-

JPMORGAN CHASE BANK, N.A.,  
Defendant.

-----X

November 18, 2010  
9:59 a.m.

Videotaped Deposition of  
DANIEL NIGRO, taken by attorneys for Defendant,  
pursuant to notice, held at the offices of Paul  
Weiss Rifkind Wharton & Garrison, LLP, 1285  
Avenue of the Americas, New York, New York,  
before Helen Mitchell, a Shorthand Reporter and  
Notary Public.

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED  
by and between counsel for the  
respective parties hereto, that the  
filing, sealing and certification of the  
within deposition shall be and the same  
are hereby waived;

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as to  
the form of the question, shall be  
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may be  
signed and sworn to before any officer  
authorized to administer an oath with  
the same force and effect as if signed  
and sworn to before the Court.

APPEARANCES:

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Daingerfield, Texas 75638

BY: BRADLEY E. BECKWORTH, ESQ

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& GARRISON, LLP  
Attorneys for Defendant  
1285 Avenue of the Americas  
New York, New York 10019

BY: JONATHAN H. HURWITZ, ESQ  
SATYAM N. BEE, ESQ

ALSO PRESENT:

CHRIS MARTIN - Videographer

LINDSEY DELLER, ESQ.  
JPMorgan Chase Bank, N.A

Nigro  
(Expert declaration of Daniel  
Nigro marked Nigro Exhibit 1 for  
identification.)

(Declaration of Mr. Nigro in  
rebuttal to report of Patricia W.  
Chadwick marked Nigro Exhibit 2 for  
identification.)

THE VIDEOGRAPHER: Good morning. 09:59:44  
We're on the record. My name is Chris 09:59:45  
Martin, I'm the videographer for 09:59:47  
Veritext Court Reporting in New York 09:59:49  
City. 09:59:51

Today's date is November 18th, 09:59:52  
2010, and the time is 9:59 a.m. 09:59:53

This deposition is being held at 09:59:57  
the office of Paul Weiss, 1285 Avenue of 09:59:59  
the Americas, New York. New York. 10:00:02

The caption on this case is Board 10:00:05  
of Trustees of the AFTRA Retirement Fund 10:00:06  
versus JPMorgan Chase Bank, N.A., 10:00:09  
consolidated civil action number 10:00:14  
09-00686, filed in the U.S. District 10:00:15  
Court, Southern District of New York. 10:00:20  
The name of the witness is Daniel 10:00:23

1 Nigro  
 2 Q And you say in your report that 10:03:58  
 3 you were a portfolio manager for more than 20 10:03:59  
 4 years; is that right? 10:04:03  
 5 A Yes. 10:04:04  
 6 Q And that's true; right? 10:04:05  
 7 A Yes. 10:04:06  
 8 Q You say in your report, in the 10:04:07  
 9 opening paragraph of Exhibit 1, that you 10:04:08  
 10 analyzed, purchased and managed a wide variety 10:04:11  
 11 of securities in the corporate, ABS and MBS 10:04:15  
 12 sectors; right? 10:04:19  
 13 A That is correct. 10:04:20  
 14 Q And, for the record, so we're all 10:04:20  
 15 on the same page here, "ABS" is asset-backed 10:04:22  
 16 securities; correct? 10:04:25  
 17 A Asset-backed securities. 10:04:26  
 18 Q Right. 10:04:27  
 19 And MBS is mortgage-backed 10:04:27  
 20 securities; is that right? 10:04:29  
 21 A Yes, it is. 10:04:30  
 22 Q And when you use the term "MBS," 10:04:31  
 23 do you view that as a subset of ABS, or do you 10:04:35  
 24 think of ABS as something separate from MBS? 10:04:37  
 25 A It's funny, because I think of MBS 10:04:44

1 Nigro  
 2 as both. Let me explain. 10:04:47  
 3 There are non-agency RMBS, which 10:04:51  
 4 are often classified as a subset of ABS, and 10:04:54  
 5 there are MBS that are agency issued that are 10:04:57  
 6 not considered part of ABS. I've worked in 10:05:00  
 7 both. So my answer is that it's -- it's also -- 10:05:03  
 8 it's both a subset of ABS, and in parts not a 10:05:09  
 9 subset of ABS. 10:05:13  
 10 Q Okay. 10:05:14  
 11 When you use the term "MBS," are 10:05:14  
 12 you including both agency securities and 10:05:16  
 13 non-agency securities? 10:05:18  
 14 A Yes. 10:05:19  
 15 Q And you -- you say here you were 10:05:20  
 16 the portfolio manager and head of both ABS and 10:05:21  
 17 MBS credit between May 2004 and December 2009 at 10:05:27  
 18 two CDO firms; is that right? 10:05:32  
 19 A That is correct. 10:05:36  
 20 Q And one of these CDO firms was 10:05:36  
 21 called Ischus? 10:05:38  
 22 A That's correct. 10:05:39  
 23 Q You were there in 2004-2005? 10:05:39  
 24 A Yes. 10:05:43  
 25 Q And the next one was called 10:05:43

1 Nigro  
 2 Dynamic Credit Partners; is that right? 10:05:45  
 3 A Yes. 10:05:46  
 4 Q And as you say, "As portfolio 10:05:47  
 5 manager for my last" -- 10:05:48  
 6 MR. HURWITZ: Strike that. 10:05:49  
 7 Q As a portfolio manager for Dynamic 10:05:53  
 8 Credit Partners, you were responsible for more 10:05:54  
 9 than \$2.5 billion in ABS and MBS assets; is that 10:05:56  
 10 right? 10:06:01  
 11 A Yes. 10:06:01  
 12 Q And when you say you were 10:06:02  
 13 responsible, you constructed the portfolios, you 10:06:04  
 14 analyzed the securities, you bought securities 10:06:06  
 15 and you sold securities; is that right? 10:06:09  
 16 A That is correct. 10:06:10  
 17 Q And is it fair to say that the 10:06:14  
 18 focus of most of your career has been mortgage 10:06:15  
 19 products and structured finance? 10:06:19  
 20 A I would disagree with that 10:06:22  
 21 statement. Let me explain. 10:06:24  
 22 For the first 15 years of my 10:06:26  
 23 career, the predominance of my activity was in 10:06:29  
 24 the corporate sector, and beginning in the early 10:06:35  
 25 1990s I became acquainted with agency, followed 10:06:40

1 Nigro  
 2 by non-agency, securities. They were not a 10:06:45  
 3 majority of my activity until the late 1990s, 10:06:52  
 4 until now. 10:06:54  
 5 Q So would it be fair to say, 10:06:57  
 6 then -- would it be fair to say that the focus 10:06:58  
 7 of your career for, say, the last decade or so, 10:07:00  
 8 has been mortgage products and structured 10:07:03  
 9 finance? 10:07:06  
 10 A That is correct. 10:07:07  
 11 Q And by "mortgage products" you're 10:07:07  
 12 including MBS, both agency and non-agency; 10:07:10  
 13 right? 10:07:14  
 14 A Yes. 10:07:15  
 15 Q All right. 10:07:15  
 16 And what do you mean -- just so 10:07:16  
 17 we're on the same page here, what do you mean by 10:07:20  
 18 the term "structured finance"? 10:07:22  
 19 A I mean ABS securities. And I 10:07:27  
 20 worked with a CDO firm, so I was contributing to 10:07:32  
 21 the construction portfolios that were CDOs. My 10:07:36  
 22 firm also had constructed CLOs. 10:07:40  
 23 Q Do you consider CDOs part of 10:07:42  
 24 structured finance? 10:07:44  
 25 A I do. 10:07:45

1 Nigro  
 2 chair of Goldman -- the CFO of Goldman -- making 12:21:47  
 3 statements like that in June 2007? 12:21:51  
 4 A I don't remember Blankfein one way 12:21:54  
 5 or another, I'm sorry. 12:21:56  
 6 Q Okay. 12:21:58  
 7 Do you think that it's imprudent 12:22:06  
 8 to rely on the assessment of the chair of the 12:22:09  
 9 Federal Reserve and the Secretary of the 12:22:12  
 10 Treasury about where the credit market's going? 12:22:14  
 11 Is that an imprudent thing to do? 12:22:17  
 12 A To rely on them exclusively? 12:22:19  
 13 Q No, sir, that's not my question. 12:22:21  
 14 My question is, is it prudent to 12:22:22  
 15 rely on the assessments of the chair of the 12:22:24  
 16 Federal Reserve and the Secretary of the 12:22:25  
 17 Treasury about broad movements in the U.S. 12:22:27  
 18 credit markets and the economy generally? 12:22:31  
 19 A I'm not sure I understand what you 12:22:34  
 20 mean by "rely." 12:22:39  
 21 Q Okay. 12:22:40  
 22 So your view is it would have 12:22:41  
 23 been -- 12:22:43  
 24 MR. HURWITZ: Strike that. 12:22:44  
 25 Okay, let's go. 12:23:10

1 Nigro  
 2 Q Now, in the first half and the 12:23:13  
 3 second half of 2007 you and your firm, Dynamic 12:23:31  
 4 Credit, were telling prospective investors that 12:23:34  
 5 they should invest in U.S. residential 12:23:44  
 6 mortgage-backed securities, CDOs backed by U.S. 12:23:46  
 7 residential mortgage-backed securities, and 12:23:50  
 8 other sectors of the shadow banking system, were 12:23:53  
 9 you not? 12:23:55  
 10 A I'm sorry, would you repeat the 12:23:57  
 11 question so I understand it. 12:23:59  
 12 Q Absolutely. 12:24:00  
 13 In the first and second half of 12:24:00  
 14 2007, you and your firm, Dynamic Credit, were 12:24:01  
 15 encouraging investors to make investments in 12:24:05  
 16 U.S. residential mortgage-backed securities, 12:24:10  
 17 CDOs backed by those securities, and other 12:24:14  
 18 sectors of the shadow banking system; isn't that 12:24:16  
 19 correct? 12:24:20  
 20 A I believe we made suggestions in 12:24:21  
 21 the first half of 2007. I'm not sure that we 12:24:22  
 22 made such recommendations in the second half of 12:24:25  
 23 2007. 12:24:29  
 24 Q Okay. 12:24:30  
 25 Well, in the second half of 2007, 12:24:30

1 Nigro  
 2 you yourself made investments in subprime 12:24:32  
 3 residential mortgage-backed securities, did you 12:24:36  
 4 not? 12:24:39  
 5 A I'm not certain with a hundred 12:24:45  
 6 percent accuracy. 12:24:46  
 7 Q In the second half of 2007, isn't 12:24:46  
 8 it a fact that you yourself, and your firm, 12:24:49  
 9 invested other people's money -- hundreds of 12:24:51  
 10 millions of dollars of other people's money -- 12:24:54  
 11 in U.S. subprime residential mortgage-backed 12:24:55  
 12 securities? 12:24:59  
 13 MR. BECKWORTH: Objection. 12:25:00  
 14 A I'm not sure that I did that in 12:25:06  
 15 the second half of 2007. 12:25:08  
 16 Q Did you do it in the first half of 12:25:09  
 17 2007? 12:25:11  
 18 A Yes. 12:25:11  
 19 Q Okay. 12:25:12  
 20 Do you recall a CDO called 12:25:13  
 21 Barrington II? 12:25:15  
 22 A Yes. 12:25:16  
 23 Q What is Barrington II? 12:25:16  
 24 A Barrington II is a CDO managed by 12:25:18  
 25 Dynamic Credit Partners. 12:25:20

1 Nigro  
 2 Q All right. 12:25:22  
 3 That was a \$1.75 billion CDO; 12:25:22  
 4 correct? 12:25:26  
 5 A Yes, that is correct. 12:25:26  
 6 Q And the -- and you recall that it 12:25:27  
 7 was issued in mid-May 2007? 12:25:36  
 8 A I didn't recall a specific date, 12:25:39  
 9 but that sounds right. 12:25:40  
 10 Q So that's about two weeks before 12:25:41  
 11 JPMorgan Securities Lending invested in the 12:25:42  
 12 Sigma notes at issue; right? 12:25:46  
 13 A Yes. 12:25:48  
 14 Q Okay. 12:25:49  
 15 And Dynamic Credit was a -- was 12:25:50  
 16 the investment manager for that CDO; right? 12:25:52  
 17 A Yes. 12:25:56  
 18 Q And the CDO was designed to invest 12:25:56  
 19 in synthetic structured finance instruments; 12:26:01  
 20 right? 12:26:06  
 21 A It was a cash CDO. 12:26:07  
 22 Q Okay. 12:26:08  
 23 Was it -- it was a cash CDO, and 12:26:10  
 24 it was designed to invest in cash residential 12:26:11  
 25 mortgage-backed securities and other types of 12:26:15

1 Nigro  
2 A No. 17:22:43  
3 Q So in your view, each and every 17:22:44  
4 day between June 4th, 2007 and September 30, 17:22:48  
5 2008 it was imprudent to hold the notes rather 17:22:52  
6 than to sell them at that point; is that right? 17:22:56  
7 A Yes. 17:22:58  
8 Q Okay. 17:22:59  
9 Now, in the course of your career, 17:23:02  
10 you've had to make decisions whether to sell 17:23:07  
11 securities you had invested in; right? 17:23:11  
12 A Yes. 17:23:13  
13 Q And in fact, one of your 17:23:14  
14 responsibilities as an investment manager for 17:23:15  
15 CDOs was to monitor the investments you made and 17:23:17  
16 decide if it was appropriate to sell them; 17:23:21  
17 right? 17:23:23  
18 A Um-hum. 17:23:24  
19 Q And you monitored them in order to 17:23:30  
20 determine whether the security was becoming more 17:23:31  
21 risky than it was when you had first invested in 17:23:33  
22 it? That's at least one of the reasons that you 17:23:35  
23 did the monitoring; right? 17:23:37  
24 MR. BECKWORTH: Objection. 17:23:38  
25 A Yes. 17:23:41

1 Nigro  
2 Q One of the things that you were 17:23:42  
3 looking at when you were monitoring the 17:23:42  
4 securities in the portfolio was has this 17:23:44  
5 security increased in its -- in riskiness: 17:23:46  
6 right? 17:23:49  
7 A Yes. 17:23:50  
8 Q And sometimes that happened 17:23:51  
9 because there's something specific to the 17:23:52  
10 security, or it can be general market 17:23:53  
11 developments; right? 17:23:56  
12 A Yes. 17:23:57  
13 Q And in fact, that happened a lot 17:23:57  
14 during 2007 and 2008, in your experience; right? 17:23:59  
15 A Yes. 17:24:07  
16 Q I mean, a lot of the things that 17:24:08  
17 you had bought that you thought were safe turned 17:24:09  
18 out not to be as safe as you thought; right? 17:24:12  
19 A That is correct. 17:24:14  
20 Q And part of your job was to assess 17:24:16  
21 how much riskier it was; right? 17:24:18  
22 A Yes. 17:24:20  
23 Q And -- now, when you're trying to 17:24:21  
24 decide whether to hold a security you've bought 17:24:23  
25 or to sell it, one of the things that you also 17:24:26

1 Nigro  
2 need to look at is how much would I get if I 17:24:29  
3 sell it; right? 17:24:33  
4 A It's one of the criteria. 17:24:34  
5 Q Sure. 17:24:36  
6 And one of the things you also 17:24:36  
7 need to investigate is, indeed, are there any 17:24:37  
8 buyers at all; right? 17:24:40  
9 A Yes. 17:24:42  
10 Q Okay. 17:24:43  
11 And if something becomes riskier, 17:24:45  
12 based on your experience as a portfolio manager, 17:24:48  
13 you don't just sell it regardless of price; 17:24:50  
14 right? 17:24:52  
15 MR. BECKWORTH: Objection. 17:24:53  
16 A Price is one component, one part 17:24:54  
17 of the decision. 17:24:56  
18 Q Sure. You have to analyze 17:24:57  
19 whether, in light of the additional risk, 17:24:59  
20 selling at the price you could get makes sense; 17:25:01  
21 right? 17:25:05  
22 MR. BECKWORTH: Objection. 17:25:06  
23 A Well, one would have to take a 17:25:08  
24 look at the context of the account that you're 17:25:09  
25 managing, its risk tolerance, its funding, 17:25:11

1 Nigro  
2 structural features, other kinds of structural 17:25:16  
3 changes in risk parameters, et cetera, in order 17:25:20  
4 to help make those decisions, among other 17:25:23  
5 things. 17:25:25  
6 Q Sure. 17:25:25  
7 And -- and you understand that in 17:25:26  
8 JPMorgan Securities Lending, as in other 17:25:29  
9 contexts, you wouldn't just -- if something 17:25:32  
10 becomes risky, you don't just sell at any price; 17:25:43  
11 right? 17:25:46  
12 A (No response) 17:25:47  
13 Q Let me ask it a different way. 17:25:49  
14 because you look a little puzzled. 17:25:50  
15 When Jim Wilson was deciding 17:25:58  
16 whether to hold the Sigma notes or to sell them, 17:26:00  
17 you agree with me that one of the things that it 17:26:04  
18 was appropriate for him to consider was "How 17:26:08  
19 much can I get for them if I sell them"; right? 17:26:10  
20 A That was one of the concerns, yes. 17:26:13  
21 Q Sure. 17:26:16  
22 And you would agree with me, would 17:26:16  
23 you not, that even if the Sigma notes became 17:26:18  
24 risky, if you couldn't get a fair price for 17:26:23  
25 them, you still wouldn't want to sell them; 17:26:25

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1	Nigro		1	Nigro	
2	right?	17:26:28	2	A Yes.	17:28:07
3	MR. BECKWORTH: Objection.	17:26:28	3	Q You'd need to look at what the	17:28:07
4	A I'm not sure I understand what you	17:26:31	4	impact of selling would be on the market price;	17:28:08
5	said, "became risky."	17:26:32	5	right?	17:28:10
6	Q Would you agree with me --	17:26:34	6	A Yes.	17:28:12
7	A I think they were risky	17:26:36	7	Q You'd need to look at the risk	17:28:12
8	throughout.	17:26:37	8	tolerance of your investors: right?	17:28:13
9	Q Well, they certainly -- is it your	17:26:37	9	A Yes.	17:28:15
10	view that they were equally risky from June 4,	17:26:39	10	Q Okay.	17:28:15
11	2007 to September 30, 2008?	17:26:42	11	And would you -- let me just -- so	17:28:18
12	A No.	17:26:45	12	we're clear here, however we characterize	17:28:21
13	Q Okay.	17:26:46	13	"fair," would you agree with me that if you --	17:28:29
14	Did they -- in your view, did they	17:26:46	14	if Jim Wilson had sold the Sigma notes for less	17:28:32
15	become riskier over time?	17:26:48	15	than a fair price, that would not be a prudent	17:28:38
16	A Yes.	17:26:50	16	decision?	17:28:41
17	Q And they became riskier over time	17:26:50	17	MR. BECKWORTH: Objection.	17:28:42
18	as a result of developments with Sigma, and also	17:26:52	18	A I'm not sure I can answer that.	17:28:49
19	developments in the market; right?	17:26:54	19	I'm not sure I have enough information to answer	17:28:51
20	MR. BECKWORTH: Objection.	17:26:55	20	that question.	17:28:52
21	A Among other things, yes.	17:26:56	21	Q And as the information -- what is	17:28:53
22	Q Okay.	17:26:57	22	the information that you lack?	17:28:55
23	On any particular day after	17:27:02	23	A The context of when, the context	17:29:00
24	June 4, 2007, when Jim Wilson was deciding	17:27:05	24	of how much effort I've put into marketing,	17:29:02
25	whether to sell, it would only be prudent for	17:27:09	25	types of people, price, who holds it, where I	17:29:06
Page 330			Page 332		
1	Nigro		1	Nigro	
2	him to sell if he could get a fair price; do you	17:27:14	2	thought the trajectory of credit was going	17:29:11
3	agree with that?	17:27:20	3	generally, trajectory of prices, what other	17:29:13
4	A I think I need to know more about	17:27:22	4	people were telling me internally at JPM, among	17:29:16
5	it in order to answer that question; what is	17:27:23	5	other things.	17:29:19
6	fair, how much are we talking about, what the	17:27:29	6	Q Okay. All of that is helpful.	17:29:20
7	alternatives are, which clients we're working	17:27:32	7	I'm really trying to get at a very simple	17:29:24
8	for, et cetera.	17:27:35	8	concept, and I think it shouldn't be	17:29:28
9	Q So there's a lot of things that go	17:27:36	9	controversial.	17:29:30
10	into deciding whether or not it's appropriate to	17:27:38	10	On any given date, would you agree	17:29:31
11	sell -- it was appropriate for Jim Wilson to	17:27:40	11	with me that there was some price -- however	17:29:33
12	sell the 2009 Sigma MTNs between the purchase	17:27:43	12	low -- below which it would not be prudent for	17:29:36
13	date and the receivership date; right?	17:27:46	13	Jim Wilson to sell?	17:29:38
14	A Yes.	17:27:48	14	MR. BECKWORTH: Objection.	17:29:42
15	Q And you would need to look at what	17:27:49	15	A I think that the standard of	17:29:49
16	does the risk level look like right now; right?	17:27:54	16	prudence -- we can talk about that all over	17:29:52
17	A Okay.	17:27:56	17	again -- but the idea that price alone	17:29:54
18	Q You'd need to look at the market	17:27:58	18	determines it and that a price on any given day,	17:29:56
19	value -- the market price; right?	17:27:59	19	if it's below fair -- I don't know -- I think it	17:30:00
20	A Yes.	17:28:01	20	depends on when we look at this. You know, if	17:30:04
21	Q You'd need to look at how many	17:28:01	21	we looked at it the day before bankruptcy, it	17:30:07
22	buyers are there; right?	17:28:02	22	wasn't.	17:30:12
23	A Yes.	17:28:03	23	Q You would have to do a day-by-day	17:30:14
24	Q You'd need to look at how much	17:28:04	24	analysis of the prices of the market, of the	17:30:16
25	you're trying to sell; right?	17:28:05	25	riskiness, of other things, in order to assess	17:30:20

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1	Nigro	1	Nigro
2	what an appropriate sale transaction would be; 17:30:26	2	said, that you are not offering an opinion as to 17:32:20
3	is that right? 17:30:27	3	what price JPMorgan Securities Lending could 17:32:24
4	A Yes. 17:30:28	4	have obtained from selling the Sigma notes on 17:32:31
5	MR. BECKWORTH: Let me just 17:30:29	5	any particular time -- at any particular time 17:32:33
6	interject -- 17:30:30	6	between June 4th, 2007 and September 30, 2008? 17:32:34
7	MR. HURWITZ: I just want to be -- 17:30:31	7	MR. BECKWORTH: Objection. I 17:32:37
8	MR. BECKWORTH: I'm still going 17:30:33	8	think that mischaracterizes his report 17:32:38
9	to -- let me listen to the question, 17:30:34	9	and his testimony. 17:32:39
10	have time to object. 17:30:36	10	MR. HURWITZ: Okay. 17:32:41
11	THE WITNESS: Certainly, I'm 17:30:38	11	A In my report I talk about methods 17:32:46
12	sorry. 17:30:38	12	of attempting to sell the securities. 17:32:50
13	Q Let me use an extreme example just 17:30:43	13	Q Right, I understand that. 17:32:55
14	to illustrate the point. 17:30:44	14	A And so that could have affected 17:32:55
15	If JPM -- if Jim Wilson had 17:30:47	15	the price that was realized at any given point 17:32:57
16	decided to sell all of the Sigma notes, the 2009 17:30:49	16	in time. And I also spent some time talking 17:32:59
17	Sigma notes he was holding on September 1st, 17:30:52	17	about what I would call Say's law; supply 17:33:05
18	2007 for ten cents on the dollar, do you have a 17:30:57	18	creates demand. And so, therefore, I didn't 17:33:09
19	view whether that -- a sale at that price would 17:31:02	19	specify a particular price, but I suggested that 17:33:12
20	have been prudent? 17:31:05	20	you can improve market conditions. 17:33:17
21	MR. BECKWORTH: Objection. 17:31:06	21	Q Would -- just to be clear, are you 17:33:21
22	A Given that I know that the company 17:31:13	22	offering an opinion on any particular date 17:33:26
23	had a standing bid for the notes of 94 at that 17:31:15	23	between June 4, 2007 and September 30, 2008, as 17:33:28
24	time, to sell it at ten would have been 17:31:19	24	to how much -- at what price JPMorgan could have 17:33:31
25	imprudent. 17:31:23	25	sold its 2009 Sigma medium term notes? 17:33:35
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1	Nigro	1	Nigro
2	Q Okay. 17:31:23	2	MR. BECKWORTH: Objection. 17:33:41
3	What about on March 1st, 2008, 17:31:24	3	THE WITNESS: I'd like to ask a 17:33:48
4	would it have been imprudent to sell the Sigma 17:31:28	4	question of you, if I can. 17:33:49
5	notes at ten cents on the dollar? 17:31:30	5	MR. HURWITZ: Unless the question 17:33:51
6	MR. BECKWORTH: Objection. 17:31:33	6	relates to a point of privilege, I'm 17:33:52
7	A I don't know. 17:31:34	7	entitled to have an answer before you 17:33:54
8	Q Okay. 17:31:34	8	consult with counsel. 17:33:56
9	And you don't know because you 17:31:36	9	MR. BECKWORTH: I agree with that. 17:33:57
10	just haven't done the analysis of what the 17:31:37	10	Let me find out what his question 17:33:57
11	prices were, what the alternatives were, and the 17:31:39	11	generally is. I agree that the -- 17:33:59
12	other things you've mentioned; is that correct? 17:31:42	12	MR. HURWITZ: Well, no, no, no. 17:34:00
13	A Among other things, yes. 17:31:43	13	no. If there's a question about -- he 17:34:01
14	MR. BECKWORTH: Objection. 17:31:45	14	can say whether it's a question about 17:34:03
15	Q So just so I'm clear, then, you 17:31:55	15	privilege or not. 17:34:04
16	are not offering an opinion in this case about 17:31:57	16	MR. BECKWORTH: Is it a question 17:34:05
17	whether -- what on any particular day Jim Wilson 17:32:00	17	about your discussions with the 17:34:06
18	could have achieved, what price he could have 17:32:06	18	attorneys? 17:34:07
19	achieved, by selling the Sigma notes; is that 17:32:07	19	MR. HURWITZ: Which is not 17:34:08
20	right? 17:32:10	20	privileged. 17:34:08
21	MR. BECKWORTH: Objection. 17:32:11	21	MR. BECKWORTH: You're not the 17:34:10
22	A Would you repeat the question. 17:32:14	22	arbiter of what is or isn't privileged. 17:34:11
23	please? 17:32:14	23	If he says he wants to know if he can 17:34:13
24	Q Sure. 17:32:15	24	ask a question, I need to find out what 17:34:16
25	I take it, from what you just 17:32:18	25	generally he wants to ask the question 17:34:18

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<p>1 Nigro</p> <p>2 considerations, including what would we reinvest 17:40:23</p> <p>3 in, how would we earn enough to repay our 17:40:27</p> <p>4 liabilities, the fact that our clients expected 17:40:31</p> <p>5 us to remain invested in the securities that we 17:40:34</p> <p>6 described to them, that it was match funded with 17:40:36</p> <p>7 funds for the full duration of the CDO time 17:40:38</p> <p>8 period. 17:40:41</p> <p>9 Q Did you ever consider telling your 17:40:42</p> <p>10 clients -- going to your clients at any time 17:40:44</p> <p>11 during that period and saying, "You know, we 17:40:46</p> <p>12 think you should liquidate all of these 17:40:49</p> <p>13 holdings" -- 17:40:53</p> <p>14 A No, we did not. 17:40:55</p> <p>15 Q -- "because the market has just 17:40:56</p> <p>16 gotten -- the waters have just gotten too 17:40:58</p> <p>17 rough"? 17:41:01</p> <p>18 A No. 17:41:02</p> <p>19 Q Would you agree that over the 17:41:02</p> <p>20 course of mid-2007 through the end of 2008 the 17:41:03</p> <p>21 market for structured finance securities became 17:41:09</p> <p>22 less and less liquid? 17:41:12</p> <p>23 MR. BECKWORTH: Objection. 17:41:15</p> <p>24 MR. HURWITZ: Go ahead. 17:41:17</p> <p>25 A I think that there were ebbs and 17:41:19</p>	<p>1 Nigro</p> <p>2 challenging. 17:42:41</p> <p>3 Q Looking back, do you regret not 17:42:42</p> <p>4 having sold more? 17:42:43</p> <p>5 A You're allowing me to look back 17:42:47</p> <p>6 with 20/20 hindsight today in order to answer 17:42:49</p> <p>7 the question? 17:42:53</p> <p>8 Q You bet. 17:42:53</p> <p>9 A Sure, with 20/20 hindsight. 17:42:54</p> <p>10 Q Did you do any analysis in this 17:43:04</p> <p>11 case of what holders of the Sigma MTNs -- the 17:43:06</p> <p>12 2009 Sigma MTNs -- could expect to recover if 17:43:12</p> <p>13 Sigma went into receivership? 17:43:18</p> <p>14 MR. BECKWORTH: Objection. 17:43:21</p> <p>15 MR. HURWITZ: Let me rephrase it, 17:43:24</p> <p>16 because I don't -- this is not something 17:43:25</p> <p>17 that should be controversial. 17:43:26</p> <p>18 Q You saw Ms. -- I was going to a 17:43:28</p> <p>19 say "O'Driscoll." It's been a long day. Let's 17:43:32</p> <p>20 start all over. 17:43:35</p> <p>21 You saw in Miss Chadwick's report 17:43:36</p> <p>22 she described a -- what she called a recovery 17:43:38</p> <p>23 analysis -- 17:43:42</p> <p>24 A Um-hum. 17:43:42</p> <p>25 Q -- which was an analysis of -- as 17:43:43</p>
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<p>1 Nigro</p> <p>2 flows in liquidity during that time frame. 17:41:21</p> <p>3 Q Would you agree that the overall 17:41:24</p> <p>4 trend was toward increasing illiquidity, or 17:41:25</p> <p>5 decreasing liquidity? 17:41:30</p> <p>6 A I think that at the end of 2008 17:41:32</p> <p>7 there was less liquidity than at the end of 17:41:33</p> <p>8 2007. 17:41:36</p> <p>9 Q And was part of the reason that 17:41:38</p> <p>10 you didn't just liquidate all of the assets that 17:41:50</p> <p>11 you were holding in the CDOs was you felt you 17:41:54</p> <p>12 couldn't get a fair price for them? 17:41:58</p> <p>13 MR. BECKWORTH: Objection. 17:42:00</p> <p>14 A I think a dynamic in the context 17:42:01</p> <p>15 of our investment guidelines, with the risk 17:42:04</p> <p>16 appetites of our investors, and the term 17:42:07</p> <p>17 financing structure that we had, we made a 17:42:10</p> <p>18 decision that the assets -- the majority of the 17:42:12</p> <p>19 assets -- were more valuable to us to hold than 17:42:16</p> <p>20 to sell. 17:42:18</p> <p>21 Q Okay. 17:42:20</p> <p>22 And for some of those assets, that 17:42:21</p> <p>23 was a hard decision; right? 17:42:22</p> <p>24 MR. BECKWORTH: Objection. 17:42:24</p> <p>25 A The market conditions were 17:42:40</p>	<p>1 Nigro</p> <p>2 of a particular time what she believed Sigma MTN 17:43:47</p> <p>3 holders could reasonably expect to receive if 17:43:50</p> <p>4 Sigma went into a receivership. 17:43:53</p> <p>5 You recall that? 17:43:56</p> <p>6 A Yes. 17:43:57</p> <p>7 Q You, yourself, in this case have 17:43:58</p> <p>8 not done that analysis for Sigma; correct? 17:43:59</p> <p>9 A Correct. 17:44:06</p> <p>10 Q Okay. 17:44:06</p> <p>11 I'd like to just go through the -- 17:44:21</p> <p>12 some of your history as an investor between 2004 17:44:27</p> <p>13 and 2007. 17:44:30</p> <p>14 A Um-hum. 17:44:32</p> <p>15 Q And let me just run through -- 17:44:37</p> <p>16 according to as best we can tell, you were 17:44:46</p> <p>17 involved in the issuance of something like nine 17:44:48</p> <p>18 CDOs during that time period. 17:44:52</p> <p>19 Does that sound right? 17:44:55</p> <p>20 A Broadly speaking. 17:44:56</p> <p>21 Q Okay. 17:45:00</p> <p>22 And according -- as best we can 17:45:04</p> <p>23 determine, and please tell me if I'm wrong, 17:45:05</p> <p>24 right now, as of today, about five of those nine 17:45:07</p> <p>25 CDOs are in default? 17:45:10</p>



1 Nigro  
2 A I don't know the exact count. I 17:45:12  
3 have no reason to dispute the numbers that you 17:45:13  
4 give me. 17:45:16  
5 Q Okay. 17:45:16  
6 And the remainder, almost all of 17:45:17  
7 the -- all of the tranches of the remainder, are 17:45:20  
8 in the very low non-investment grade category 17:45:23  
9 right now, today. 17:45:27  
10 Would you agree with that? 17:45:30  
11 A Most knowledgeable investors 17:45:31  
12 expect all, if not practically all, CDOs issued 17:45:33  
13 from 2005 on to ultimately default. 17:45:37  
14 Q Okay. 17:45:40  
15 And you would include in that -- 17:45:41  
16 you would -- so you would say of the CDOs that 17:45:44  
17 you were responsible or involved in issuing 17:45:49  
18 between 2004 and 2007, if they're not already in 17:45:51  
19 default, they're going to default eventually; 17:45:53  
20 right? 17:45:58  
21 A There's a strong likelihood of 17:45:58  
22 that. 17:46:00  
23 Q And right now the ratings of all 17:46:00  
24 of those CDOs, even if they're not in default, 17:46:01  
25 are in the low -- sort of in the very 17:46:06

1 Nigro  
2 speculative category; right? 17:46:10  
3 MR. BECKWORTH: Objection. 17:46:12  
4 A (No response) 17:46:16  
5 Q Sir, I'm happy to go through them 17:46:17  
6 one by one, I just want to know if we can get 17:46:18  
7 through this based on your recollection. If we 17:46:22  
8 can't, we'll go through them. I'm happy to go 17:46:23  
9 through the documents, it's not a problem at 17:46:26  
10 all. 17:46:27  
11 A It's my understanding that most of 17:46:30  
12 them have declined precipitously in ratings. 17:46:31  
13 Q Right. 17:46:36  
14 You have what we've marked -- 17:46:39  
15 here, let me give you what we've marked as Nigro 17:46:41  
16 Exhibit 11. That's the same document you're 17:46:44  
17 looking at. 17:46:45  
18 A Um-hum. 17:46:54  
19 Q You're familiar with a firm called 17:46:55  
20 Total Securitization? 17:46:56  
21 A Yeah. 17:46:58  
22 Q And that's a well-known firm in 17:46:58  
23 the -- 17:46:59  
24 A It is. 17:46:59  
25 Q -- in the ABS and CDO area; right? 17:46:59

1 Nigro  
2 A Yes. 17:47:03  
3 Q In fact, one of the CDOs that you 17:47:05  
4 worked on, called Sheffield II, got some sort of 17:47:06  
5 award from Total Securitization; right? 17:47:10  
6 A It did. 17:47:13  
7 Q And you guys -- 17:47:13  
8 A Barrington II was up for an award. 17:47:18  
9 Q And you guys made the fact that 17:47:20  
10 you had won that award part of the pitch, right, 17:47:21  
11 part of your pitch for Dynamic? 17:47:23  
12 A Barrington II was up for an award 17:47:24  
13 also. 17:47:26  
14 Q Okay. 17:47:28  
15 And what this is is a risk 17:47:28  
16 generated by Total Securitization of U.S. 17:47:32  
17 default of CDOs. 17:47:37  
18 Do you see that? 17:47:39  
19 A Okay. 17:47:40  
20 Q And just to go through them 17:47:40  
21 quickly, if you look about halfway down the 17:47:41  
22 page, you'll see Barrington. 17:47:44  
23 That's one that's defaulted, and 17:47:45  
24 that you were involved with while you were at 17:47:46  
25 Dynamic; right? 17:47:48

1 Nigro  
2 MR. BECKWORTH: Before you answer 17:47:49  
3 that. 17:47:50  
4 I'm going to object to this 17:47:50  
5 document. It doesn't show any date on 17:47:52  
6 here when this was created, as of -- or 17:47:54  
7 an as-of or an effective date. 17:47:57  
8 MR. HURWITZ: Okay. 17:47:59  
9 MR. BECKWORTH: And also I'm going 17:47:59  
10 to object on the basis that -- I'm sure 17:48:00  
11 you're not trying to pull something on 17:48:03  
12 us. I have no way to tell if this is a 17:48:05  
13 complete or, in fact, authentic 17:48:07  
14 document. 17:48:09  
15 MR. HURWITZ: Okay. 17:48:09  
16 MR. BECKWORTH: So I will reserve 17:48:10  
17 any rights. We may need to come back 17:48:11  
18 and verify that or otherwise challenge 17:48:13  
19 it. 17:48:16  
20 MR. HURWITZ: That's fine, you 17:48:17  
21 can -- I'm allowed to mark a document 17:48:18  
22 and to ask the witness questions about 17:48:21  
23 it. 17:48:22  
24 MR. BECKWORTH: I understand that, 17:48:23  
25 I'm reserving my rights. 17:48:23

1 Nigro  
2 MR. HURWITZ: Sure. That's fine. 17:48:26  
3 MR. BECKWORTH: My objection is on 17:48:27  
4 the record. 17:48:28  
5 MR. HURWITZ: Got it. 17:48:29  
6 MR. BECKWORTH: If he can answer 17:48:30  
7 questions about it, we will do our best 17:48:31  
8 to do so. 17:48:32  
9 MR. HURWITZ: Okay. 17:48:33  
10 BY MR. HURWITZ: 17:48:34  
11 Q You agree with me that to your 17:48:36  
12 understanding Barrington is in default? 17:48:37  
13 A It has gone EOD. 17:48:39  
14 Q Yes. 17:48:40  
15 EOD means event of default; right? 17:48:41  
16 A Yes. 17:48:44  
17 Q And then if we look at the next 17:48:45  
18 page, about -- between a third and halfway down 17:48:47  
19 you'll see that Dalton likewise went EOD; right? 17:48:49  
20 A That is not a primarily 17:48:53  
21 residential deal, it is a Dynamic deal. 17:48:55  
22 Yes, it has gone EOD. 17:48:58  
23 Q Okay. 17:49:00  
24 I'm sorry, I don't understand what 17:49:12  
25 you just said. When you say it's not primarily 17:49:13

1 Nigro  
2 a residential deal, what are you talking about? 17:49:15  
3 A The assets were primarily -- 17:49:17  
4 Q CDOs? 17:49:21  
5 A -- CDOs. 17:49:22  
6 Q So this describes it as an -- 17:49:23  
7 contrary to the way it is described here, in 17:49:30  
8 fact it's a CDO squared as we've discussed; 17:49:32  
9 right? 17:49:35  
10 A Yes. 17:49:35  
11 Q Okay. 17:49:36  
12 And then, if you look on the next 17:49:36  
13 page -- and it's helpful that these are roughly 17:49:39  
14 in alphabetical order -- you see Ischus I and II 17:49:43  
15 as being in default; right? 17:49:45  
16 A Yes. 17:49:47  
17 Q And you agree with me that that's 17:49:49  
18 the case, Ischus I and II have gone EOD? 17:49:50  
19 A Yes. 17:49:54  
20 Q And then two pages on you'll see 17:49:57  
21 Sheffield II, which is slightly out of 17:50:01  
22 alphabetical order. 17:50:03  
23 That also has gone EOD; correct? 17:50:05  
24 A Okay, I'm searching for it. I see 17:50:09  
25 it is below Singa, and therefore it's out of 17:50:15

1 Nigro  
2 order. 17:50:18  
3 Yes, it went EOD. 17:50:20  
4 Q Okay. 17:50:22  
5 And then -- I think that's the 17:50:23  
6 last one here. 17:50:26  
7 And then in terms of -- for the 17:50:33  
8 sake of completeness -- the other -- let me just 17:50:34  
9 go through the other CDOs that you were involved 17:50:39  
10 in issuing at Ischus and Dynamic. 17:50:43  
11 There was Lenox; is that right? 17:50:47  
12 A Yes. 17:50:48  
13 Q And Lenox is speculative grade 17:50:53  
14 now; right? 17:50:55  
15 A I don't know. I haven't looked at 17:50:55  
16 it. I'll -- 17:50:57  
17 Q Okay. 17:50:57  
18 A -- accept until I -- I'll reserve 17:50:58  
19 judgment until I see otherwise. 17:51:03  
20 Q And then there was Monterey? 17:51:04  
21 A Yes. 17:51:06  
22 Q And Sheffield I? 17:51:06  
23 A Yes. 17:51:07  
24 Q And Barrington II, which we've 17:51:07  
25 talked about; right? 17:51:09

1 Nigro  
2 A Yes. 17:51:10  
3 Q Have I missed any? 17:51:11  
4 A You know, I'd have to go back to 17:51:15  
5 my marketing documents, but, okay, let's -- I'm 17:51:18  
6 not doing any -- you've hit all the ones that 17:51:21  
7 were primarily residential. 17:51:24  
8 Q Okay. And I think there was one 17:51:25  
9 called Magnolia, but we haven't been able to 17:51:27  
10 find any information about it. 17:51:30  
11 A That's one that's -- yes. 17:51:31  
12 Q And by my count, roughly speaking, 17:51:35  
13 in aggregate there was about 5. -- those CDOs, 17:51:38  
14 the nine I've just mentioned -- 17:51:42  
15 A Um-hum. 17:51:44  
16 Q -- had about \$5.7 billion in 17:51:44  
17 investments all told; right? 17:51:47  
18 A In notional. 17:51:49  
19 Q Well, more than notional. That's 17:51:52  
20 the amount that the investors put into the 17:51:53  
21 vehicles; right? 17:51:56  
22 A I'd have to go back to verify, but 17:51:58  
23 I'll accept your number for now, sure. 17:52:01  
24 Q Does that sound approximately 17:52:03  
25 right? 17:52:05